

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARRYL PATRICK LYNCH,

Plaintiff,

v.

ORDER
03-CV-556A

MICHAEL McDONOUGH,

Defendant.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B), on December 9, 2003. On July 1, 2005, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion to dismiss should be granted in part and dismissed as moot in part, the action be dismissed without prejudice and that the Clerk of Court be directed to close the case.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation,

defendant's motion to dismiss is granted in part and dismissed as moot in part and the action is dismissed without prejudice. The Clerk of Court is directed to take all steps necessary to close the case.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: July 25 , 2005